



MILPITAS ETHICS PROGRAM

October 6, 2004

TWENTY QUESTIONS:

INTRODUCTION TO THE MILPITAS ETHICS COMPLAINT PROCESS

1. Why does Milpitas have a new *Code of Ethics*?

On June 1, 2004, the City Council approved a new *Code of Ethics*, designed to improve the conduct of campaigns, to encourage best conduct on the part of public officials, and to build public trust. The *Code* does this by promoting and maintaining the highest standards of conduct by the City Council, Commissions, City Management, Senior City Staff, and candidates for City Council.

2. What does the *Code* say?

The *Code* identifies the City's Core Values as *honesty, respect, fairness, teamwork, stewardship, and accountability*. Each value is accompanied by a representative set of **role model behaviors** public officials are expected to practice. These core values and role model behaviors are so fundamental to public trust and public confidence that the City places an *ethical obligation* on individuals and groups to follow the *Code* and to meet, as the *Code's* Preamble says, "the most demanding ethical standards and demonstrate in word and action the deepest commitment to the City's values."

3. What does the community expect of public officials and candidates for City Council?

The people of Milpitas expect all elected and appointed officials, candidates for public office, City Management, and Senior Staff to follow this *Code* and practice its six core values to such an extent that they are seen as credible role models who have mastered the fundamental ethical practices that include, but are not limited to, those described in the *Code*.

4. What is the purpose of the *Behavioral Standards* document?

The *Behavioral Standards*, also approved on June 1, 2004, provide specific examples of everyday actions and decisions which are consistent with each value in the *Code* and examples of behaviors which are not. The document seeks to describe enough positive and negative behaviors that a reasonable person will be able to judge whether their own or others' behavior is consistent with specific values in the *Code of Ethics*.

5. What are the fundamental promises public officials and candidates for City Council make to the residents of Milpitas?

The *Preamble to the Code of Ethics* identifies three fundamental promises for City officials:

- a.) to be vigilant in serving the public's interest;
- b.) to be at their best in advancing the community's good;
- c.) to be accountable to the people and the institutions the public official represents.

6. How are public officials and candidates for Council held accountable?

Citizens have at least two ways to hold public officials and candidates accountable.

- a. Every elected official is held accountable at the ballot box, if the citizen chooses, for example, to vote only for candidates the voter considers to be credible role models of the City's values.
- b. Under Ordinance 265, anyone may make use of the City's formal accountability process, which begins when a complaint is filed, alleging violations of the Code of Ethics and Behavioral Standards. The complaint initiates a process that involves the City's new Ethics Evaluation Panel, which holds a hearing, listens to all sides, and makes an impartial judgment that a violation has or has not occurred. The Panel determines the appropriate sanction and publishes the results on a City webpage set up to record the disposition of complaints by the Ethics Evaluation Panel.

7. What is the Ethics Evaluation Panel (or the EEP)?

Four consultants have been appointed by the City Council upon the recommendation of Dr. Tom Shanks, the City's ethics consultant, to serve as an independent and impartial Ethics Evaluation Panel (EEP). One will serve as the Lead Ethics Evaluator with additional administrative duties. To assure that these Ethics Evaluators are free to make fair and independent judgments, they do not live, vote, or work in Milpitas; they have not been involved with Milpitas politics or campaigns; they are not currently running for office or in office in another city; they have the professional background, experience, and competence to investigate complaints about alleged violations of the *Code of Ethics*, make fair judgments, and apply appropriate sanctions.

8. Who can file a complaint?

According to the ordinance, "Anyone may file a complaint." The person filing the complaint is known as the "complainant."

9. Who can a complaint be filed against?

The EEP has jurisdiction over complaints filed against City Council members, Commissioners, and candidates for City Council. Complaints against Senior Staff should be directed to the City Manager and are handled according to established City personnel practices. Complaints against the City Manager should be directed to the Mayor. The person who is alleged to have violated the *Code of Ethics* is known as "the respondent."

10. What kinds of complaints will the EEP accept?

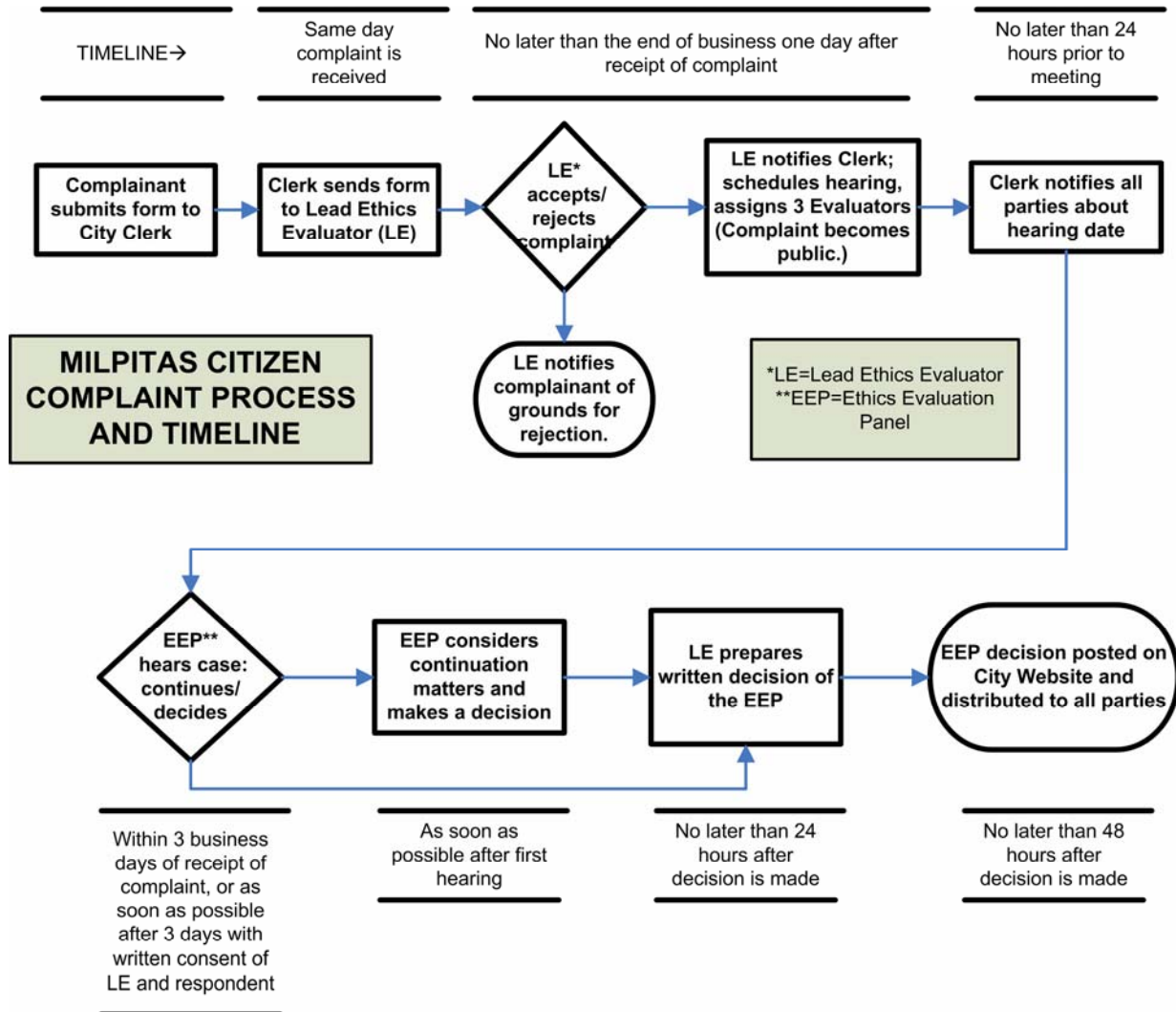
In order to accept a complaint, the Lead Ethics Evaluator makes sure that all of the following conditions are met:

- a. The respondent is one of the persons over whom the EEP has jurisdiction: City Council members, Commissioners, and candidates for City Council.
- b. Complaints are based on behavior or actions that took place on or after September 17, 2004, the day the EEP ordinance took effect.
- c. Complaints state the specific code or behavioral standard alleged to have been violated.
- d. The Citizen Complaint Form has been filled out completely, signed by the complainant, and dated.

- e. Sufficient facts, evidence, documentation, and witnesses, if any, are detailed in the form, prior to the hearing, to warrant a hearing.

11. What happens to my complaint once I submit it and what is the timeline?

The flow-chart below shows the steps in the citizen complaint process once a complaint is submitted to the City Clerk's office. The time-line for each step is located above the step on the top line and below the step on the bottom line. Notice that the complaint does not become public until the Lead Evaluator accepts it and notifies the City Clerk.



12. What happens during the hearing?

Meetings of the Ethics Evaluation Panel are open to the public, and are held in accordance with the Brown Act. The Lead Evaluator chairs the meeting and is joined by two other Evaluators, who will vote on the disposition of the case. Three Evaluators are necessary for a quorum. Votes from two of the three Evaluators constitute a majority for the decision. During the hearing, any person may present argument, whether written or oral, testimony, and documentary evidence relevant to the Panel's determination of whether a violation has occurred. When everything has been heard, the Panel may make a decision or direct continuation of the matter in order to receive additional information or allow further

deliberation by the Ethics Evaluation Panel. The Panel's decisions are final. The ordinance makes no provision for an appeal.

13. How do the Ethics Evaluators make their decision about violations?

The City sought to develop a fair and efficient process for resolving disagreements about Ethics Code violations. The Ethics Evaluators hear all sides of the story and consider evidence from a variety of sources and then they make their best judgment. Was the behavior in question more like the positive behaviors the Code is seeking to emulate, or was it more like the negative behaviors in the Behavioral Standards?

In making this determination, the EEP evaluates the behavior in question from the perspective of the **reasonable person**: Would a reasonable person act the same way under the circumstances? Is the current behavior consistent with the character traits of a reasonable person as the law understands them? The online *Jurisdictionary* describes the reasonable person as one who:

- exercises care not to injure others
- does not steal
- does not lie
- acts responsibly to others and to him/herself
- follows the Golden Rule
- exercises self-interest
- is not required to give his money to the poor or to be a hero
- is required, however, to act in a way that will not adversely affect the welfare of others or the welfare of society as a whole.
- exercises [due diligence](#) to ensure that his/her acts (including both his spoken and written words) do not injure others.

14. What are the sanctions if the EEP finds that the Code has been violated?

If the EEP determines that a violation has occurred, it may issue an order that requires the public official or candidate to cease and desist the violation; and/or apologize to any who have been harmed by the violation. In addition, decisions of the EEP shall use the following hierarchy of terms (from least to most severe) to hold the violator accountable for the severity of the violation. The panel may issue an order of:

- Public Criticism (Least severe)
- Public Reprimand (more severe)
- Public Reproach (more severe still)
- Public Condemnation (most severe).

The Panel is empowered by the City Council to take these actions independently of the Council. In the most severe cases, the Panel may also advise additional action by the City Council, for example: removal of a Commissioner or censure of a Council member.

15. Does the EEP have any advice for someone who is thinking about filing a complaint?

The Ethics Evaluation Panel operates in good faith and asks everyone who is considering filing a complaint to act in good faith. Filing a complaint is serious business and initiates the full complaint process as described in these pages. Prior to filing a complaint, the Panel strongly encourages residents to seek to resolve the conflict directly with the person

or persons involved. If possible, talk directly with the person you believe is acting inappropriately to see if the problem can be resolved informally. Prepare for that conversation by reviewing the *Code of Ethics* to be sure that it covers the problem you see. Keep good records and copies of any written documentation that support your complaint. Ask yourself what you need the other person to do to resolve the problem (For example, would an apology be enough?) Then seek to have a conversation that focuses on the behavior; try to avoid accusing or demonizing the other person.

If you are not satisfied with the result, consider talking with someone who might be able to mediate a satisfactory resolution. If either of these is not possible, then file a complaint.

16. Will my complaint be taken seriously?

Every complaint will be taken seriously. Residents have the right to expect that public officials will keep their promises. This is a fundamental for building public trust. If there has been a legitimate violation of the Code of Ethics, residents should file a complaint. Your complaint might lead to stopping some behavior that will weaken public trust or cause some other harm. Your complaint might bring something to the attention of someone who will become a better leader. It might also identify an area of the Ethics Program that needs additional training or further development.

At the same time, public officials and candidates have the right to do their work without being hampered by spurious ethics charges or by politically motivated complaints. Both of these are violations of the Behavioral Standards and will themselves be criticized by the Ethics Evaluation Panel when they discover them.

17. What rights does the person have who is complained against?

The respondent has the right to be considered innocent until the Ethics Evaluation Panel rules otherwise. The Panel reminds everyone that the filing of an ethics complaint simply reflects one person's opinion about the ethical appropriateness of an action. When the Lead Evaluator accepts a case as being worthy, he is making a narrow set of decisions: that the complaint form has been filled out completely, that the alleged violation is within the subject matter jurisdiction the EEP is empowered to hear and that there are adequate facts available on which to make a judgment. Both the respondent and the complainant have the right to tell their stories fully before the EEP. Others may be called on to present arguments, written or oral, testimony, and documentary evidence relevant to the Panel's determination of whether a violation has occurred. Additionally, the respondent and the LE can agree, if done in writing, to scheduling the meeting more than three days later, if the respondent needs more time to prepare their side of the story.

18. Can an Ethics Evaluator be removed by the City Council?

The City Council can remove one or more Ethics Evaluators in the case of substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of office, or a violation of the *Code of Ethics*. Prior to removal, the City Council shall engage an independent investigator to investigate whether grounds for removal exist and receive a report from the investigator. Affirmative votes of four of the five members of the City Council are required to engage an independent investigator and to remove an Ethics Evaluator.

19. Who are the Ethics Evaluators currently?

Dr. Philip Riley is currently the Lead Ethics Evaluator. Dr. Riley is Associate Professor of Religious Studies at Santa Clara University. Previously he has served as Vice Provost, Senior Associate Dean of Arts and Sciences, Dean of the Summer Session, and Chair of the Department of Religious Studies. He lives in Santa Clara. Riley has been appointed to a 4-year term.

Susan Branch earned her J.D. from Hastings College of the Law in 1982 and served as Deputy County Counsel for Santa Clara County from 1986 until her retirement on September 20, 2004. Most recently she served as Lead Attorney for the Health and Hospital System, Valley Medical Center. She lives in Los Gatos. Branch has been appointed to a 3-year term.

Barbara Conant served for 12 years as Mayor and Councilmember in Campbell. She retired from teaching after a 41-year career. She was formerly the chair of the Joint Powers Authority overseeing the Santa Clara County Library and is currently on the Board for the Campbell Chamber of Commerce and the Campbell Museum Foundation. Conant has been appointed to serve a 2-year term.

Aldyth Parle has been appointed as the fourth Ethics Evaluator effective Wednesday, December 8, 2004 when she ends an 8-year term as Council member for the City of Santa Clara. Parle has chaired that City's Ethics Ordinance Committee and was instrumental in developing Santa Clara's award-winning program in Ethics and Values. Parle is a retired Public Health Nurse. She has an MA from Columbia University. She is a native Santa Clara. Parle has been appointed to a 1 year term.

20. How does the formal accountability system fit into the bigger picture of the implementation of the Ethics Code?

The Ethics Evaluation Panel holds candidates and public officials accountable for the promises they make in the *Code of Ethics*. With this system of accountability, the community scrutinizes the public officials and makes judgments about violations of the Code. The public official is held responsible for their failure to keep their promises to act according to the Code.

But there is another sense of accountability which is also an important part of the Milpitas program, and that is the scrutiny that leads to recognition and praise for the promises that have been kept and the extraordinary work that has been done on behalf of the people of Milpitas. Recognition and reward for living the Code is a habit the City must develop. Both recognition and sanctions are important parts of the Milpitas implementation program, but recognition for a job well done, telling stories of extraordinary contribution to living Milpitas values, and identifying role models are much greater success factors for cities with vibrant Ethics Codes.